



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

January 23, 2020

Ms. Tonya Baer, Deputy Director  
Office of Air  
Texas Commission on Environmental Quality (MC 122)  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Objection to Title V Permit No. O2269  
ExxonMobil Corporation, Baytown Chemical Plant  
Harris County, Texas

Dear Ms. Baer:

This letter is in response to the Texas Commission on Environmental Quality (TCEQ) submittal to our office containing the proposed renewal of the Title V permit for the ExxonMobil Baytown Chemical Plant referenced above. TCEQ indicated in the cover letter of the submittal that EPA's 45-day review period would begin on December 10, 2019, and end on January 24, 2020. We have reviewed the proposed title V permit action including TCEQ's response to comments and Statement of Basis. In accordance with 40 CFR § 70.8(c) and 42 U.S.C. § 7661d(b)(1), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act (Act) requires EPA to object to the issuance of a proposed Title V permit during its 45-day review period if EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. The Enclosure to this letter provides the specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections.

Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to address the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the State must respond to our objection within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding objection issues may be resolved prior to the expiration of the 90-day period.

We are committed to working with the TCEQ to ensure that the final title V permit is consistent with all applicable title V permitting requirements and the EPA approved Texas Title V air permitting program. If you have questions or wish to discuss this further, please contact Cynthia Kaleri, Air Permits Section Chief at (214) 665-6772, or Aimee Wilson, Texas Permit Coordinator at (214) 665-7596. Thank you for your cooperation.

Sincerely,

1/23/2020

 David F Garcia

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Signed by: DAVID GARCIA  
David F. Garcia, P.E.  
Director  
Air & Radiation Division

Enclosure

cc: Baytown Chemical Plant Site Manager  
ExxonMobil Corporation

Mr. Sam Short, Director  
Air Permits Division  
Texas Commission on Environmental Quality (MC-163)

## **Objections to Title V Permit O2269**

**1. Objection to Improperly Incorporating Confidential Operational Limits and Emission Calculations.** The proposed title V permit incorporates by reference NSR permits 96220, 28441, and 8586. Each of these NSR permits contains special conditions which references confidential information submitted in permit applications.

- NSR permit 96220 includes references to the initial permit application's confidential file dated November 2011 at special conditions 4(A), 11, and 12. Special Condition 4(A) in permit 96220, establishes a production rate for polymer production. Special Condition 11 in permit 96220, enforces a limitation on the products to be stored in seven storage tanks. Special Condition 12 in permit 96220, enforces a limitation on the products to be loaded and unloaded at three loading racks.
- NSR permit 28441, at Special Condition 4, references confidential information contained in the associated August 2014 permit amendment application. Special Condition 4 in permit 28441 establishes an operational production limitation on the Toluene Disproportionation Unit.
- NSR permit 8586, at Special Condition 4, references confidential information contained in the associated February 2003 application. Special Condition 4 in NSR permit 8586 provides an operational limitation on the production rates of polypropylene for all production lines.

The Clean Air Act ("CAA") limits the types of information that may be treated as confidential in a title V permit, and therefore withheld from the public. In this instance, NSR applications containing confidential information have been incorporated into corresponding NSR permits and, in turn, are now incorporated by reference into the proposed title V permit as a term of that permit. As a general matter, some information may be protected as a trade secret under section 114(c) of the CAA. 42 U.S.C. § 7414(c). However, the CAA specifically limits this protection: "The contents of a [title V] permit shall not be entitled to [confidential] protection under section [114(c)]." 42 U.S.C. § 7661b(e). Regarding the contents of a title V permit, the CAA further requires that "Each permit issued under this subchapter shall include enforceable emission limitations and standards, ... and such other conditions as are necessary to assure compliance with applicable requirements ...." 42 U.S.C. § 7661c(a). EPA regulations further require that the contents of a title V permit include "emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." 40 C.F.R. §70.6(a)(1). Further, "terms and conditions in a part 70 permit... are enforceable by the Administrator and citizens under the Act." 40 C.F.R. §70.6(b)(1). Additionally, information which is considered emission data, as well as standards or limitations, are also not entitled to confidential treatment. *See* CAA § 114(c) ("other than emissions data"); 40 C.F.R. §2.301(f).

The EPA has previously evaluated the use of confidential requirements in permits issued by TCEQ. *See In the Matter of ExxonMobil Corporation, Baytown Refinery*, Order on Petition No. VI-2016-14 (April 2, 2018) (Baytown Order). In granting that petition, the EPA acknowledged that a potential conflict exists between TCEQ's regulatory scheme and the CAA mandate that does not afford confidential protections to the contents of a permit.

Here, the confidential information that is referenced in NSR permits 96220, 28441, and 8586 and subsequently incorporated into the proposed title V permit establishes binding requirements

governing operations of the plant related to production limits of various products. Since the limitations from the NSR permits and associated applications are incorporated into the proposed title V permit, these production rates would be part of the contents of the title V permit. Therefore, for purposes of title V permitting, they are not entitled to protection as confidential pursuant to CAA § 503(e). Further, since these limitations on production are applicable requirements for purposes of title V, they must be enforceable by citizens in addition to the EPA. *See* CAA § 504(a); 42 U.S.C. § 7414(b)(2); *id.* § 7604(a)(1), (f)(4). Because the production rates or limitations are confidential, the public does not know what these applicable requirements are, negating the ability of citizens to enforce these conditions. TCEQ asserts that according to the Texas Health & Safety Code § 382.041 that as an agent of the commission they “may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.” The Texas Health & Safety Code § 382.041 cannot override 503(e) of the CAA. The CAA states that permit terms of the title V permit cannot be withheld from the public. TCEQ failed to provide a sufficient response to comments received on this issue by failing to adequately explain why the claimed confidential information does not establish binding, enforceable permit terms (or other information necessary to assure compliance with a permit term). Since these special conditions are incorporated by reference into the title V permit, they appear to be “contents of a [title V] permit” and therefore ineligible for confidential treatment.

In addition, while EPA was in the process of reviewing PBR registrations applicable to ExxonMobil Baytown Chemical Plant, we identified PBR applications which had the emission calculations marked as confidential and these PBR applications were for registering the PBR establishing federally enforceable emission limits, and thus incorporated by reference into the title V permit. The following PBR registrations establishing federally enforceable emission limits had the emission calculations identified as confidential on the application (identified by registration and PBR rule number): 39070 (106.262), 50952 (106.261 and 106.124), 74542 (106.261), 83400 (106.261 and 106.262), 151078 (106.261 and 106.262), 151047 (106.261 and 106.262), 151017 (106.261 and 106.262), 149708 (106.261 and 106.262), 148321 (106.261 and 106.262), 148861 (106.261 and 106.262), 148600 (106.261 and 106.262), 148594 (106.261 and 106.262), 147480 (106.262), 147270 (106.261 and 106.262), 145967 (106.262), 145938 (106.261), 144055 (106.261 and 106.262), 144054 (106.261 and 106.262), 143521 (106.261 and 106.262), 138869 (106.261 and 106.262), 141229 (106.261 and 106.262), 140847 (106.262), 139477 (106.261 and 106.262), 138601 (106.261 and 106.262), 136257 (106.261 and 106.262), 136019 (106.262), 136006 (106.261 and 106.262), 135448 (106.262), 134883 (106.261 and 106.262), 132686 (106.261 and 106.262), 131804 (106.261 and 106.262), 131373 (106.261), 131037 (106.261, 106.262, and 106.478), 130000 (106.261 and 106.262), 129961 (106.262), 129931 (106.261 and 106.262), 126098 (106.262), 124201 (106.262 and 106.472), 124055 (106.261 and 106.262), 124140 (106.262), 123832 (106.261 and 106.262), 123403 (106.261 and 106.262), 123247 (106.262), 122827 (106.261 and 106.262), 122598 (106.261 and 106.262), 151221 (106.261), 153201 (106.261 and 106.262), and 151078 (106.261 and 106.262). The emissions calculations in the PBR registrations are emissions data under CAA 114(c) and 40 C.F.R. § 2.301(a)(2)(i)(B) and should not be treated as confidential. TCEQ should evaluate if the emission calculations that support the enforceable limits established in the PBR registration are emissions data.

For each of these issues—the claimed confidential information in the title V permit and the claimed confidential emissions calculations—TCEQ should conduct a reevaluation to ensure that this information is neither part of the title V permit, establishing binding, enforceable permit terms, nor

considered emissions data for purposes of CAA 503(e) and 40 C.F.R. § 2.301(a)(2)(i)(B). If TCEQ can establish that this information is not part of the title V permit operational limit or emissions data, TCEQ will still need to establish the basis or details in the permit record for why it is not necessary to enforce these as a term or condition of the title V permit.

2. **Objection for Failure to Include all Applicable Requirements.** The proposed title V permit fails to meet the requirements of CAA § 504(a) for “(e)ach permit issued under this subchapter shall include enforceable emission limitations and standards, . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.” TCEQ’s definition of “applicable requirement” (found at 30 TAC § 122.10(2)) includes an extensive list of federal and state provisions. Minor NSR permits and Permits by Rule (PBRs) are included in TCEQ’s definition of applicable requirement and are applicable requirements as defined under 40 CFR § 70.2. TCEQ’s response to a comment on this issue did not fully respond to the public comment received and was not entirely correct, as explained in more detail below.

The proposed title V permit does not contain enough information to clearly identify if all applicable requirements have been included in the title V permit. The table *New Source Review Authorization References* lists the following PBR authorizations as applicable requirements: 106.122, 106.183, 106.261, 106.262, 106.263, 106.264, 106.266, 106.371, 106.478, and 106.512. The proposed title V permit does not list any emission units to be authorized under PBR 106.122, 106.183, 106.266, 106.371, or 106.512 and does not identify, in the statement of basis, that these PBRs only apply to insignificant units.

PBRs 106.261, 106.262, 106.263, 106.478, and 106.512 require registration. The TCEQ database<sup>1</sup> shows over 50 PBR registrations each for PBRs 106.261 and 106.262. There are entries in the permit associated with emission units, but it is unclear if all are represented since not all have the registration number identified. The database shows two registrations for PBR 106.478, but only one is identified with an emission unit and it does not include the registration number. In the *Motiva Order*, signed May 31, 2018, and the *ExxonMobil Baytown Refinery Order*, signed April 2, 2018, we granted a petition for an objection on facts closely resembling this type of incorporation by reference issue. In those orders, EPA objected because the “Permit contains no direct reference to certain source-specific requirements (e.g., certified emission limits) derived from registered PBRs, it is not clear that the Permit currently includes or incorporates all requirements that are applicable to the facility, as required by the CAA, the EPA’s regulations.” *ExxonMobil Baytown Refinery Order* at 22; *Motiva Order* at 30. Notably, the EPA and TCEQ also agreed as part of the Operating Permits Program approval process that “PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility.” See 66 Fed Reg. 63322 n.4. (December 6, 2001). This agreement is evident in TCEQ’s regulations approved by the EPA. See 30 TAC 122.142(b)(2)(B)(i) (“Each permit shall also contain specific terms and conditions for each emission unit regarding the following: ... the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards.”). This is also consistent with the EPA’s longstanding position that materials incorporated by reference must be clearly identified in the permit. See, e.g., White Paper Number 2 at 37 (“Referenced documents must also be specifically identified.”) Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the proposed title V

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<sup>1</sup> [https://www.tceq.texas.gov/permitting/air/nav/air\\_status\\_permits.html](https://www.tceq.texas.gov/permitting/air/nav/air_status_permits.html)

permit since it is not in compliance with the requirements of CAA § 504(a) and 40 CFR § 70.6(a)(1) & (3). In responding to this objection, the TCEQ should identify which PBRs apply to which emission units or process areas, and which PBRs apply generally or site-wide to the facility or only to insignificant units. Once TCEQ identifies which PBRs apply to which emission units, TCEQ should revise the permit and/or the permit record to ensure the permit itself is clear as to this point. TCEQ should also ensure that the title V permit includes all current PBRs authorized at the source and that it does not reference minor NSR permits or PBRs that are no longer applicable. TCEQ had initially proposed changes to their OP-REQ1 form of their title V permit application to include an additional table for applicants to fill out that would identify registered/certified PBRs, PBRs that were claimed as site-wide, and those PBRs which were claimed for insignificant emission units. EPA encourages TCEQ to reconsider these changes as were proposed in their June 13, 2018 letter to EPA, Re: Executive Director's Response to EPA Objections Regarding Permits by Rule.

EPA has discovered that ExxonMobil has requested that several registered PBRs and Standard Exemptions (SEs) be incorporated by consolidation into NSR permit 20211 upon issuance of its renewal. The renewal application for NSR permit 20211 was submitted to TCEQ on December 23, 2016. The renewal of the NSR permit has not been issued and it is premature not to include the PBRs and Standard Exemptions from the title V permit at this time. Once TCEQ consolidates by incorporating the PBRs and Standard Exemptions into the NSR permit and voids the PBR's and SE's, then their removal from the title V permit could be warranted after that process is completed. At this time, none of the PBRs that have been proposed to be consolidated into NSR permit 20211 are listed in the title V permit. Once NSR permit 20211 is issued, ExxonMobil should submit a minor revision application for the title V permit upon the issuance of the renewal for NSR permit 20211. The following PBRs are shown to be consolidated by incorporation into the renewal of NSR permit 20211:

- PBR 106.261, registrations 102554, 123403, 41621, 43766, 52417, 71653, 75416, 76270, and 87877
- PBRs 106.262, registrations 123403, 43700, 48743, 76179, 76270, 79993
- PBR 106.264, registrations 102544, 102545, 102549, 102550, 102551, 102552, 102553, 102558
- PBR 106.478, registration 39479
- PBR 106.533, registrations 39222, 71466
- Standard Exemption 76, registrations 103414, 103151
- Standard Exemption 46, registration 103165
- Standard Exemption 51, registration 22750
- Standard Exemption 86, registrations 22764, 22765, 22766, 34349
- Standard Exemption 87, registration 23981
- Standard Exemption 106 registrations 103133, 103152, 103159, 103167, 103170, 103175, 103179, 23448, 31854, 32592, 34522, 34849
- Standard Exemption 118 registration 23260, 23989, 31317, 34522, 34849
- Standard Exemption 7, registration 103178
- Standard Exemptions without a rule specified, registrations 14744, 14948, 14949, 15786

An update to the renewal application submitted on November 16, 2018, indicates that PBR registration 152890 (PBRs 106.261 and 106.262) for unit ID BTCPFUG and PBR registration

153201 (PBRs 106.261 and 106.262) for unit ID FS12 were to be added to the title V permit. The EPA has been unable to find these registration numbers in the proposed title V permit. In addition, Standard Permit 117789 was added to the title V permit but was not identified as being associated with any emission unit. It appears that standard permit 117789 should be included as an NSR authorization for RHB Fugitives (FGRHB). TCEQ should ensure that all applicable requirements are identified in the title V permit as requested by the applicant.

A review of the TCEQ NSR database shows that the following permits (with issuance dates prior to the title V renewal application) appear to be effective and are not identified in the title V permit (identified below by PBR/SE rule number and registration number): SE 76 (25071), SE 76 (25944), SE 75 (26135), SE 27 (103169), SE 76 (32622), SE 76 (103141), SE 76 (103147), SE 106 (33518), SE 106 (103134), SE 76 (103139), PBR 106.262 (35507), PBR 106.261 (102559), PBR 106.261 and 106.262 (36806), PBR 106.264 (102557), PBR 106.512 (38991), PBR 106.261 (38990), PBR 106.262 (39020), PBR 106.262 (39070), PBR 106.261 (39364), PBR 106.262 (39823), PBR 106.262 (39822), PBR 106.261 and 106.262 (40139), PBR 106.262 (40429), PBR 106.262 (40627), PBR 106.264 (102548), PBR 106.261 (45380), PBR 106.183 (45876), PBR 106.373 (102547), PBR 106.264 (102546), PBR 106.433 (50951), PBR 106.261 (51028), PBR 106.433 (52624), PBR 106.262 (53222), PBR 106.493 (55061L001), PBR 106.124 (55900), PBR 106.124 (70174), PBR 106.262 (71881), PBR 106.261 (72234), PBR 106.261 (74542), PBR 106.262 (124140), PBR 106.216, 106.262, and 106.478 (131037), and PBR 106.261 and 106.262 (144055). If these permits are still effective and are applicable requirements, they should be included in the title V permit. Please verify whether these PBRs have either been consolidated by reference or consolidated by incorporation into an NSR permit, or whether they should be included in the title V permit.

In addition, the EPA does not agree with the TCEQ's interpretation that *White Paper Number 1* and *White Paper Number 2* support the practice of not listing in the title V permit those emission units to which generic requirements apply. As both White Papers state, such an approach is only appropriate where the emission units subject to generic requirements can be unambiguously defined without a specific listing and such requirements are enforceable. *See, e.g., White Paper Number 1* at 14; *White Paper Number 2* at 31. Thus, not listing emission units for PBRs that apply site-wide or only to insignificant units may be appropriate in some cases. However, for other PBRs that apply to multiple and different types of emission units and pollutants, the proposed title V permit and the final title V permit should specify to which units and pollutants those PBRs apply. Further, PBRs are applicable requirements for title V purposes. The TCEQ's interpretation of how *White Paper Number 1* and *White Paper Number 2* would apply to insignificant emission units does not inform how PBR requirements must be addressed in a title V permit. *See, e.g., 30 TAC 122.10(2)(H)*. The TCEQ should provide a list of emission units for which only general requirements are applicable, and if an emission unit is considered insignificant, it should be identified in the Statement of Basis as such. Further, if a PBR only applies to insignificant units, it should also be identified in the Statement of Basis as such. The TCEQ must revise the permits accordingly to address the ambiguity surrounding PBRs.

**3. Objection to the Lack of Assurance to Comply with Emission Limits and Operating Requirements.** Commenters identified the following PBRs as not having monitoring or testing methods identified that assure compliance with applicable emission limits and operating requirements: 106.122, 106.183, 106.261, 106.262, 106.263, 106.264, 106.371, 106.472, 106.473, and 106.511. In responding to comments, TCEQ explained that PBRs were approved as part of the

Texas SIP under 30 TAC Chapter 106, Subchapter A, and are applicable requirements as defined by the Texas operating permit program under 30 TAC Chapter 122. RTC Response 9. TCEQ stated in their response to public comments, “Any challenges to the validity of an NSR permit or PBR, including whether it is federally enforceable, references confidential information, or any other comment regarding the completeness or content of the NSR permit; should have been raised or should be raised through the appropriate NSR permit process. It is not appropriate for Commenters to attempt to challenge these issues in a Title V permit action”. This response was given in response to multiple comments with TCEQ citing the *PacifiCorp-Hunter (Hunter) Order* at 8, 13-18; *Big River Steel Order* at 8-9, 14-20; and the *ExxonMobil Baytown Olefins Plant Order* at 14. See response to comments at Response 1, 3, 4, 8, and 9. This is a misinterpretation by TCEQ of the *PacifiCorp-Hunter Order* (Petition No. VIII-2016-4, Order issued October 16, 2017). As the EPA has previously explained, “claims concerning whether a title V permit contains enforceable permit terms, supported by monitoring [recordkeeping, and reporting] sufficient to assure compliance with an applicable requirement or permit term (such as an emission limit established in a [NSR] permit), are properly reviewed during title V permitting. The statutory obligations to ensure that each title V permit contains ‘enforceable emission limitations and standards’ supported by ‘monitoring . . . requirements to assure compliance with the permit terms and conditions,’ 42 U.S.C. § 7661c(a), (c), apply independently from and in addition to the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title V permit.” See *South Louisiana Methanol Order* at 10; *Yuhuang II Order* at 7-8; *PacifiCorp-Hunter Order* at 16, 17, 18, 18 n.33, 19; *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20. Therefore, regardless of the monitoring, recordkeeping, and reporting initially associated with a minor NSR permit or PBR, TCEQ has a statutory obligation independent of the process of issuing those permits to evaluate monitoring, recordkeeping, and reporting in the title V permitting process to ensure that these terms are sufficient to assure compliance with all applicable requirements and title V permit terms. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008); see *Motiva Order* at 25-26.<sup>2</sup>

Below are the specific concerns associated with the title V permit incorporating individual PBRs by reference:

- PBR 106.122 Bench Scale Laboratory Equipment– permit does not specify any monitoring and testing methods that assure compliance with the emission limits assumed under 106.4. This PBR is a “one-liner” that TCEQ has identified in previous correspondence to EPA on June 13, 2018 as being for insignificant emission units.
- PBR 106.183 Boilers, Heaters, and Other Combustion Devices – permit does not specify any monitoring or testing requirements that assure compliance with emission limits and operating requirements established in the PBR. PBR contains an operational limit on the hours per year the unit can be fired and the fuel used. It also establishes a nitrogen oxide limit of 0.1 pounds per million Btu heat input in addition to the emission limits assumed under 106.4. This PBR requires registration. The PBR was registered on October 23, 2000 and given permit number 45876 by TCEQ. The permit files for this permit authorization are not available electronically from TCEQ’s Central File Room Online. According to the permit entry on the TCEQ site all we know about this authorization is that it is apparently for the synthesis gas unit and assumed to limit standby mode to 330

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<sup>2</sup> TCEQ’s argument that EPA’s interpretation in *Hunter* and *Big River Steel* makes it inappropriate to consider whether information be kept confidential is likewise misplaced. Nothing in *Hunter* or *Big River Steel* reached that issue. As explained above in Objection 1, the CAA is clear regarding the requirements for information to be publicly available and nothing in *Hunter* or *Big River Steel* even purported to change that.



days/year. The EPA assumes that this PBR authorization is for Air Preheater 1106 (F1106SG) and/or Air Preheater 1206 (F1206SGU). Both of these emission units are in NSR permit 36476/PSDTX996M1. However, the NSR permit does not indicate that there is a limit on the days the unit can be in standby mode. Further, it may be that the limit applies to both units combined. It is impossible to know how PBR 106.183 applies to the emission units and what additional requirements it imposed on the units without having the PBR registration file from TCEQ.

- PBR 106.261 Facilities (Emission Limitations) and PBR 106.262 Facilities (Emission and Distance Limitations) are very general and can be utilized to authorize a wide range of emission units. Often claimed together to permit a particular project, these PBRs have very generic terms and do not specify clearly what emissions are authorized nor which emission limits from 106.4 are applicable - each of these PBRs has a list for specific emission limits for some compounds. These PBRs do not contain any monitoring or testing requirements to assure compliance with the applicable emission limits or operational requirements.
- PBR 106.263 Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities – This PBR is also very generic as it can be applied to a variety of emission units. This PBR establishes several emission limits and incorporates requirements from other PBRs. This makes it impossible to determine what the PBR covers without the title V permit containing more information. The PBR and title V permit do not contain any monitoring or testing methods to assure compliance with any emission limits or operational requirements assumed under the PBR or 106.4.
- PBR 106.264 Replacement of Facilities – This is another fairly generic PBR that TCEQ has that may be used to authorize a variety of emission units. As the PBR is very generic, it contains no monitoring or testing requirements to show compliance with the 25 TPY of any contaminant emission limitation in the PBR. There are 8 registrations for this PBR, but none of the files are available from the TCEQ central fileroom online to determine what emission units it applies to, to determine if there is adequate monitoring or testing in the title V permit. The title V permit only shows one emission unit with this PBR as an applicable requirement and it is a tank (TK0063). This tank is also authorized by the flexible permit and PAL permit.
- PBR 106.371 Cooling Water Units – This PBR contains an operational limit that prohibits the unit from being in direct contact with a list of compounds. However, the PBR does not contain any monitoring or testing requirements to assure compliance with the emission limits assumed under 106.4 or the operational requirements of the PBR. This PBR was identified by TCEQ as being for insignificant emission units in previous correspondence to EPA on June 13, 2018.

In responding to this objection, TCEQ should amend the title V permit and permit record as necessary to specify monitoring, recordkeeping, and reporting requirements that assure compliance with the PBRs referenced above. As part of this process, it may be necessary for TCEQ to amend an underlying NSR permit and then incorporate the amended NSR permit into the title V permit. If the title V permit, the underlying PBR permit, or the enforceable representations in the application already contain adequate terms to assure compliance with these PBRs, then TCEQ should amend the permit and/or permit record to identify such terms and explain how these requirements assure compliance with these emission limits and operational requirements for an individual emission unit, process area, or site-wide where such permit applies site-wide.

To the extent that any units authorized by the PBRs listed above are insignificant units for title V purposes, TCEQ should make those clarifications in the permit and permit record, as necessary, and evaluate whether the general monitoring conditions are sufficient. EPA sent a letter to TCEQ on August 26, 2019 that identified steps TCEQ should take to identify insignificant emission units authorized by PBRs. If TCEQ determines that some units authorized by the PBRs listed above are insignificant emission units, then TCEQ should evaluate whether the general monitoring conditions contained in special condition 32 are adequate monitoring, recordkeeping, and reporting. The EPA has explained that if a regular program of monitoring, recordkeeping, and reporting for insignificant units would not significantly enhance the ability of the permit to assure compliance with the applicable requirements, no monitoring can sometimes satisfy title V and 40 CFR § 70.6(a)(3)(i). *White Paper Number 2* at 32. In addition, if TCEQ still believes monitoring is necessary for insignificant units subject to a generally applicable requirement, a streamlined approach to periodic monitoring, recordkeeping, and reporting may be appropriate. *Id.* If TCEQ amends the record or title V permit to identify those PBRs that only apply to insignificant units and includes a basis for their determination that the permit, including special condition 32, contains adequate monitoring for those PBR requirements that apply to those insignificant units, the EPA anticipates such an approach would be consistent with our guidance and the requirements of title V of the CAA.

#### **Other Issues:**

EPA has identified other areas of concern, that while we find these of concern, we are not raising specific objections in this letter. However, it is important to bring these issues forward as they compound the problems identified by the objections above.

1. PBR Consolidation into NSR Permits. TCEQ, in a September 1, 2006 memorandum, identified two different scenarios that determined when and how a PBR or a standard permit should be consolidated in a permit for a facility when the permit is amended or renewed: consolidation by reference and consolidation by incorporation. TCEQ states that “All SP and PBRs that directly affect the emissions of permitted facilities must, at a minimum be referenced when a NSR permit is amended.” Consolidation by reference under these circumstances is mandatory. Consolidation by incorporation however is voluntary. Under consolidation by incorporation, a reauthorization of the permitted action occurs under the NSR permit triggering BACT and impacts review. Consolidation by incorporation also results in the voiding of the PBR authorization. When PBRs are consolidated by reference, it becomes more difficult to determine if and when they were consolidated as the PBR authorization remains active. It is unclear how TCEQ handles identifying PBRs in the title V permit once they are consolidated by reference. As the PBRs that are consolidated by reference still remain active authorizations, are they still applicable requirements under the title V permit?
2. PBRs issued for temporary sources or for a one-time emission event. There were multiple PBRs that were issued for pilot plants; e.g. PBR 106.261 with registration # 51028 issued August 20, 2002 for BCIT-MTO Pilot Plant. As the authorization and application are not available electronically from the TCEQ file room online, EPA was unable to determine what the extent of the pilot plant was. However, it seems improbable that a pilot plant would still be in operation 18 years later, but the PBR is still shown to be “effective” on the TCEQ website. Another example is PBR 106.261/106.262 issued on June 29, 2004 and given registration number 72234. This PBR registration was available electronically from the TCEQ file room online. In this

authorization the company was requesting authorization to conduct a test of the water wash BAPP line which was to take seven days. This PBR is also still shown on the TCEQ website to be “effective.” What procedures does TCEQ have in place to ensure that PBRs are voided when they are no longer needed or valid? As these PBRs are registered and have federally enforceable limits, they should be identified in the title V permit. If they are no longer valid authorizations, TCEQ should take steps to ensure they are voided.